THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION Nos.20647 of 2004 and 3243 of 2005

Dated:27.06.2006

WRIT PETITION No.20647 of 2004

Between:

Mallela Sathaiah, and others.

…Petitioners

and

The Collector, Ranga Reddy District, Khairtabad, Hyderabad, and others.

…Respondents

WRIT PETITION No.3243 of 2005

Between:

Bankatlal Bhati and others.

…Petitioners

and

Mandal Revenue Officer, Shamshabad Mandal, Ranga Reddy District, and others.

…Respondents

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION Nos.20647 of 2004 and 3243 of 2005

COMMON ORDER:

The petitioners in W.P.No.20647 of 2004 claim to be the successors in title of one Mallela Kishtaiah. Alleging that Kishtaiah was a protected tenant and that they were dispossessed from the land, the petitioners therein filed an application under Section 32 as well as Section 40 of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short 'the Act'). By proceedings dated 25.08.2004, the Mandal Revenue Officer while granting succession in their favour directed to induct them into possession in respect of the land in Survey No.46 situated at Palamakole Village, Shamshabad Mandal, Ranga Reddy District. Therefore, they filed the present writ petition seeking a direction to the Mandal Revenue Officer to implement the said order purportedly passed under Sections 32 and 40 of the Act. After receiving notices ordered by this Court, respondent Nos.4 to 7 (in W.P.No.20647 of 2004) filed W.P.No.3243 of 2005 seeking invalidation of the proceedings of the Mandal Revenue Officer, dated 25.08.2004, on grounds more than one. Therefore, both the matters are heard together and are being disposed of by this common order. The parties hereinafter are referred to as per their status in W.P.No.3243 of 2005.

The dispute is in respect of the land in Survey No.46 (old Survey No.11) situated at Palamakole Village, Shamshabad Mandal, Ranga Reddy District. One Panthangi Rama Swamy was the pattadar and the landholder. He fell in arrears of excise to the Government of Andhra Pradesh. Therefore, the land admeasuring Acs.13.12 guntas in Survey No.46 was auctioned. One Bandaru Rajaiah purchased it in the public auction and the District Collector, Hyderabad, issued a sale certificate under Section 38 of the Andhra Pradesh Revenue Recovery Act, 1864, on 23.03.1965 in his favour. It is on record that the said

Rajaiah sold the land under a registered sale deed dated 11.09.1981 in favour of one Jaffar Bin Salam and seven others, who in turn sold the land to the petitioners under a registered sale deed dated 30.06.1995. The petitioners allege that they constructed farmhouses on the land and raised mango garden besides cultivating paddy in part of the land. On the other hand, respondent Nos.2 to 5 (the legal heirs of Kishtaiah), who claim to be the protected tenants, claim that being legal heirs of Kishtaiah they are entitled for grant of succession and restoration of possession. Their version was accepted by the Mandal Revenue Officer, who incidentally also invited objections from the petitioners. After considering the objections, the Mandal Revenue Officer recorded a finding that the protected tenant has already surrendered an extent of Acs.4.07 guntas in Survey No.46 and accordingly issued order for restoration of possession in respect of the land admeasuring Acs.4.29 guntas.

The learned Counsel for the petitioners in W.P.No.3243 of 2005 has raised the following contentions. When Bandaru Rajaiah purchased the land in Government public auction, the land ceased to be governed by the provisions of the Act by reason of Section 102(a) of the Act. Along with the respondents one Laxmamma claiming to be the wife of Kista Reddy, also filed an application under Section 32 of the Act, and the same was dismissed by the Mandal Revenue Officer on 26.07.2003, observing that when the land was auctioned, the contention of the protected tenant cannot be accepted. On 20.09.2004, the Mandal Revenue Officer addressed a letter to the District Collector seeking guidelines with regard to the nature of the disposal to be given to the application filed by the respondents as well as Laxmamma and others, and therefore, the Mandal Revenue Officer could not have passed the impugned order on 25.08.2004.

The learned Counsel for respondent Nos.2 to 5 (petitioners 1 to 4 in W.P.No.20647 of 2004) is absent in spite of the fact that the list was circulated much in advance. Be that as it is, the learned Assistant Government Pleader for Revenue (General) would oppose the writ petition submitting that under Section 90 of the Act the petitioners have an effective alternative remedy, and therefore, these questions need not be decided at this stage. As contended by the learned Counsel for the petitioners it is no doubt true that various proceedings and orders from 1965 onwards have been made part of the record in W.P.No.3243 of 2005. It is no doubt true that as contended by the learned Counsel these documents would be sufficient for deciding the controversy in the

cases. But this Court after perusing the letter bearing No.B/4146/2003, dated 20.09.2004, by the Mandal Revenue Officer is not able to countenance the submission. The said letter reads as under.

> I invite kind attention to the reference cited and submit that the lands bearing Sy.Nos.11, 12 & 21 (Old) Extent 13-12, 8-14 & 11-18 Total Extent Ac.33-04 gts and new corresponding Nos.46, (17-32), 47 (8-27) & 49 (8-08) Total Extent Ac.34-27 gts – stand patta in the name of Panthangi Rama Swamy and P.Ts over the land – (1) Kishta Reddy (2) Mallela Kishtaiah situated at Palamakole Village Panthangi Rama Swamy due excise arrears to the Govt the Govt. auctioned the land Sy.No.11 (old) Ext. Ac.13-12 gts of Palamakole Village and one Sri Bandaru Rajaiah, S/o.Nagaiah has purchased in auction and that Collector (excise) Hyderabad, has issued Sale certificate in form No.8, section 38 certificate of sale in favour of auction purchasers, and the certificates of sale were exempted stamp duty new the P.Ts/LRs of the P.Ts applied for restoration of possession under Section 32 of AP (TA) T & LA Act 1950 after issuing the notices to the concerned the present Pattadar Sri. Bankat Lal Bhatiya & 3 others have filed their objection petition stating that they are bonafide purchasers from the auction purchasers. I submit here with the copy of connected documents for ready reference.
>
> In view of the above cited I therefore request you kindly to guide me whether the P.T/LRs of the P.Ts are in title to claim under Section 32 of Tenancy Act 1950 their possession on the P.T Lands which lands already auctioned by the Govt. be and issue clarifications and direction in the light of Tenancy Act 1950.
>
> This is for kind perusal and necessary orders in this regard at an early.

A plain reading of the above would show that by the date the said communication was addressed, the application filed by respondent Nos.2 to 5 or Laxmamma and four others was pending before the Mandal Revenue Officer. This would throw some doubt with regard to passing of the impugned order dated 25.08.2004, whereby and whereunder respondent Nos.2 to 5 were granted succession as well as an order of restoration in respect of the land admeasuring Acs.4.29 guntas. This calls for an enquiry. To do so, the appellate authority would be the best suited.

Therefore, this Court is not inclined to go into the merits of the case at this stage. All the questions and submission noticed

hereinabove shall have to be considered by the Joint Collector under Section 90 of the Act as and when an appeal is preferred by the petitioners. The petitioners may file the appeal within a period of one week from the date of receipt of a copy of this order. As and when such appeal is filed, the Joint Collector, Ranga Reddy District, shall take up the appeal, and after giving notices to respondent Nos.2 to 5, dispose of the appeal within a period of eight weeks from the date of filing of the appeal. Till such exercise is completed by the Joint Collector, the writ petitioners shall not be dispossessed.

Insofar as W.P.No.20647 of 2004 is concerned, if ultimately, the order passed by the Mandal Revenue Officer is confirmed by the Joint Collector, they have to seek a remedy before the Mandal Revenue Officer and a writ petition would not lie.

Both the Writ Petitions, with the above observations and directions, are accordingly disposed of. No costs.

_____

(V.V.S.RAO, J)

27.06.2006
vs